IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1096 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
DAHYABHAI NATHABHAI DABHI & 2 - Opponent(s)

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Appearance :
MR MUKESH PATEL APP for Appellant(s) : 1,
MR YOGESH S LAKHANI for Opponent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 29/11/2006

ORAL JUDGMENT

1. Heard Shri Patel learned APP for the State of Gujarat and Shri Lakhani for the respondent-original accused. The appellant-State of Gujarat has

preferred this appeal u/s 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code for brevity) challenging the order of acquittal passed by the learned Chief Judicial Magistrate, Bhavnagar on 24th September, 1996 in Criminal Case No.3433/93 acquitting the respondent-original accused of the charges of commission of offence punishable u/s 406, 498-A read with section 114 of the Indian Penal Code.

2. The facts in brief leading to filing of the present appeal deserves to be set out as under:

2.1. It is the case of the prosecution that the original complainant-informant Rekhaben was staying with her in-laws at Ghogha. The complainant marriage had solemnized with the son of accused no.2 who was working in Army. In the initial life of marriage she was being looked after properly but after sometime she was tortured and harassed for compelling her to bring dowry. When the complainant-the first informant had gone to her mother's house for visiting her ailing brother who was being operated and returned on the same day she found that the cupboard wherein the ornaments were kept had been tempered with and the box containing gold ornaments was missing. On inquiring with the in-laws i.e. accused nos.1, 2 and 3 respectively, brother-in-law, father-in-law and mother-in-law, they threatened her with dire consequences, assaulted her and driven her away from the matrimonial home. She along with her minor

daughter of four years had to go back to her mother's home at Bhavnagar. She filed complaint before the Court of Magistrate who ordered inquiry u/s. 156(3). The concerned police station thus recorded complaint as M-Case No.4 of 1992 and initiated an investigation into the information of commission of offence given by witness no.1 against the present respondent. Ultimately, the police after investigation filed the charge sheet against the accused-respondent for commission of offence u/s 406, 498-A read with section 114 of the Indian Penal Code. As the accused no.3 was serving as part-time water server in the Court wherein the charge sheet was filed proper request was made to the Sessions Judge, Bhavnagar for transferring the case so as to rule out any sense of prejudice to any party. Accordingly, the case was transferred to the Court which passed the order of acquittal. In the present case the papers were given to the accused. The Court framed the charge at Exh.7 that eight months prior to 17/11/1992 the accused have mis-appropriated the streedhan brought by the complainant-informant when she was married to the accused no.3 son and thus committed offence punishable u/s. 406 of Indian Penal Code and accused nos.1, 2 and 3 were also charged for torturing, harassing and administering threats punishable u/s 498-A of the Indian Penal Code. The accused pleaded not guilty to the charges and claimed to be tried. The evidence of witnesses came to be recorded. The case of the prosecution was put to the accused and thereafter statement came to be recorded u/s 313 of

the Code where the accused denied the case of the prosecution. One witness Shri Sufadin Mohmmedbhai was examined as the defence witness at Exh. 28. After hearing the Counsel for the parties, the Trial Court came to the conclusion that the prosecution has failed in proving the case. On the contrary it is found by the Trial Court beyond doubt that the prosecution has failed to bring home the guilt on the part of the accused and, therefore, Trial Court acquitted them of the charges of committing offence punishable u/s 406, 498-A read with section 114 of the IPC.

3. Shri Patel learned APP has submitted that the impugned order of acquittal being erroneous and contrary to the record of the case, deserves to be quashed and set aside. Shri Patel submitted that the benefit of doubt could not have been granted to the accused as the testimony of the complainant, her mother and aunt go to show that the offence of torturing punishable u/s 498-A and mis-appropriation u/s 406 is established beyond doubt. Shri Patel submitted that the learned Trial Court has failed in appreciating the evidence of the informant i.e. complainant and her mother which has supported the case of the prosecution in its totality. It is further submitted that the panchnama also indicate that the ornaments were not found in the cupboard as it is stated by the complainant in her testimony. Shri Patel submitted that as the finding of the Trial Court is contrary to the material on record, which

has resulted into order of acquittal, deserves to be quashed and set aside.

4. Shri Lakhani learned Counsel appearing for the respondent-original accused has submitted that this being an acquittal appeal u/s 378 of the Code this Court need not interfere or reverse the decision of acquittal unless and until it is demonstrated by the prosecution that the finding and reasoning of the Trial Court are so perverse as to result into miscarriage of justice. Shri Lakhani has invited this Court's attention to the testimony of the complainant wife. He has also invited this Court's attention to the testimony of mother of the complainant and aunt and showed that the testimony cannot be said to be completely and consistently supporting the version of the prosecution. The credibility of the witness cannot be said to be unimpeachable. Shri Lakhani has further submitted that the incident of entrustment of ornaments has not been clearly revealed in testimony of any one, as against that, the fact deserves to be appreciated that the complainant has stated that the room wherein the cupboard was lying had remained locked and the keys of the lock were required to be taken from the mother of the complainant who had remained present when the panchnama was drawn in pursuance of the complaint. This fact would deal a serious blow to the credibility of the witnesses and their version.

4.1. Shri Lakhani has further submitted that in

an acquittal appeal u/s 378 of the Code even if there is a second view different than the one taken by the Trial Court is possible then also the same cannot be made basis for reversing the order of acquittal. Shri Lakhani submits that even otherwise also looking to the totality of the facts and circumstances it cannot be said that the order of acquittal suffers from any infirmity or is contrary to law nor it can be said that it has resulted into miscarriage of justice. He submits that the order of acquittal impugned in the present appeal, therefore, deserves to be sustained.

5. This Court has perused the records and proceedings of the Trial Court and heard the Counsel of the respective parties at length. The testimony of the complainant indicate clearly that the room was locked and the keys were required to be obtained from her mother for opening the room. This needs to be viewed in its proper perspective. This testimony would certainly raise serious doubts about the version of the complainant that she was beaten and driven away on her inquiry in respect of missing box. Had this been the case, then, there would not have been a possibility of she being permitted to apply lock on the room. The suggestions are made to the effect that she had already filed case for maintenance which was going on and the present complaint was filed under the advice of the lawyer and even admission on the part of the complainant was that her mother used to entertain the concerned

police officer at her tea stall. This factor and the fact that the complainant and her mother in fact brought the keys after she was driven away for collecting her belongings like cradle for the kid, clothes of the kid would go a long way to show that the version of the complainant is not correct. Shri Lakhnai has rightly submitted that even if there was a possibility of taking different view the one taken by the Trial Court, then also the same cannot be made basis for altering or reversing the decision of acquittal. In the instant case this Court is of the view that there cannot be any other view possible than the view taken by the Trial Court. The decision of the Trial Court does not suffer from any infirmity what so ever. The appellant have failed in establishing that the decision of the Trial Court suffers from any perversity. On the contrary the decision of the Trial Court is just and proper and it is based upon the evidence and it is after proper appreciation. The Trial Court has rightly come to the conclusion that the prosecution has failed in establishing its case beyond doubt and, therefore, the order of acquittal dated 24/9/1996 passed by J.M.F.C. Bhavnagar in Criminal Case No.3433/93 deserves to be confirmed and sustains and confirmed.

6. In view of the aforesaid discussions, this Court is of the opinion that the order impugned in the present appeal does not call for interference as it is just and proper and, therefore, this appeal deserves to be dismissed and accordingly it is

dismissed.

(S.R.BRAHMBHATT, J.)

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